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June 20, 2008

BY ECF

Honorable Miriam G. Cedarbaum
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street, Room 1330
New York, NY 11201

Re: Danley Phillips v. City of New York, et al. 08-CV-2921 (MGC)(RLE)

Your Honor:

I am an Assistant Corporation Counsel in the office of Michael A. Cardozo, Corporation Counsel of the City of New York, handling the defense of the above-referenced federal civil rights lawsuit. As an initial matter, I apologize to the Court as the City's answer to the complaint is currently past due. I now write on behalf of the parties to respectfully request that Your Honor endorse, *nunc pro tunc*, the enclosed joint stipulation to a sixty day enlargement of time for defendants City of New York and New York City Department of Homeless Services ("DHS") to answer or otherwise respond to the complaint from June 16, 2008, to August 15, 2008, and to further request that Your Honor adjourn the initial conference presently scheduled for June 24, 2008, at 10:15 a.m. to a date convenient to the Court on or after August 15, 2008. Plaintiff's counsel, David Segal, Esq., consents to these requests. The reasons for these requests are set forth below.

By way of background, plaintiff Danley Phillips alleges that he was assaulted on three separate occasions by DHS officers (December 13, 2005, May 24, 2006, and August 4, 2006), and that he was arrested on two of those occasions, namely December 15, 2005, and August 4, 2006. It is our understanding that the records pertaining to plaintiff's arrests may be sealed pursuant New York Criminal Procedure Law § 160.50. We have forwarded the necessary consent authorization to plaintiff's counsel so that we can access the sealed records, properly assess the case and respond to the complaint. We have also forwarded a HIPAA compliant medical release to plaintiff's attention so that we can access any relevant medical records.

To date, we have not yet received the required executed consent authorizations. However, plaintiff's counsel has informed this Office that he has reached out to his client and is

in the process of obtaining the executed authorizations. Moreover, we are continuing to work with the DHS liaison to identify the individuals named in plaintiff's complaint. Once we have received the executed consent authorizations, we can access the sealed records, properly assess the case and respond to the complaint. Accessing the records will also assist in our efforts to identify the individuals named in plaintiff's complaint.

I note for the Court's information that the civil docket sheet does not reflect that any of the individually named defendants have been served with process. An enlargement would allow time for service to be effected upon these individuals once they are identified. Once service is effected, the enlargement would also permit time for this Office to conduct an inquiry to determine whether we may represent them. See General Municipal Law § 50(k); Mercurio v. The City of New York, et al., 758 F.2d 862, 864-65 (2d Cir. 1985); Williams v. City of New York, et al., 64 N.Y.2d 800, 486 N.Y.S.2d 918 (1985) (decision whether to represent individual defendants is made by the Corporation Counsel as set forth in state law). These individuals must then decide whether he wishes to be represented by the Corporation Counsel. See Dunton v. County of Suffolk, 729 F.2d 903 (2d Cir. 1984). Only then can this office interview these individuals for the purposes of responding to the complaint. Until we know that these individuals have been served and seek representation by the Corporation Counsel, a decision cannot be made as to whether this Office may represent them.

This is the second request for Your Honor to endorse a joint stipulation enlarging defendant's time to answer or otherwise respond to the complaint. No previous request for an adjournment of the initial conference has been made, and the initial conference is the only matter presently on the docket that will be affected by this request. Accordingly, it is respectfully requested that the Court grant the City's request to endorse, *nunc pro tunc*, the annexed joint stipulation enlarging the City's time to answer or otherwise respond to August 15, 2008, and the corresponding application to adjourn the initial conference presently scheduled for June 24, 2008, to a date on or after August 15, 2008, that is convenient to the Court.

I apologize for any inconvenience associated with these requests and thank you for your consideration.

Respectfully submitted,



Maurice L. Hudson
Assistant Corporation Counsel

cc: David Segal, Esq. (By ECF)
Attorney for Plaintiff
30 Vesey Street, Room 900
New York, New York 10007

Enc.

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05:52:17 p.m. 06-20-2008

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
DANLEY PHILLIPS,

Plaintiffs,

STIPULATION

-against-

THE CITY OF NEW YORK, et al.,

08 CV 2921 (MGC)(RLE)

Defendants.
----- X

IT IS HEREBY AGREED TO AND STIPULATED by and between the parties that the time for the defendants City of New York and New York City Department of Homeless Services to answer or otherwise respond to the complaint is enlarged to August 15, 2008, and that the initial conference presently scheduled for June 24, 2008, is adjourned to a time thereafter convenient to the Court.

Dated: New York, New York
June 20, 2008

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(212) 406-9200

By: 

David Segal

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By: 

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SO ORDERED:

U.S.D.J.